

DIGITAL TRANSMISSION SERVICES AND FACILITIES AGREEMENT

This Agreement made and entered into by and between GTE Telecom Incorporated (Telecom) having offices at 1755 Telstar Drive, Suite 400, Colorado Springs, Colorado 80920-1020 and GTE Mobilnet Service Corporation, ("Customer"), having offices at 11611 N. Meridian, Suite 320, Carmel, Indiana 46032.

WITNESSES:

WHEREAS, Telecom is engaged in the provision of InterLATA, Interexchange Telecommunications Service ("IITS") to the public throughout Indiana, pursuant to the Certificate of Territorial Authority issued to Telecom by the Indiana Utility Regulatory Commission (the "Commission") in Cause No. 38618; and

WHEREAS, Customer desires Telecom to provide certain IITS and to install the facilities and equipment necessary so that Customer may obtain such IITS, and Telecom is willing to do so upon the following terms and conditions;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, Telecom and Customer agree that:

1. Services and Facilities to be Provided by Telecom

- A. The services to be provided by Telecom to Customer under the terms of this Agreement ("Services") and the facilities and equipment to be provided and installed by Telecom in order to provide said services ("Facilities") are described in the **Telecommunication Service Description(s)(1-x)**, attached hereto and incorporated herein. Telecom shall use its best efforts to install or have installed the Facilities and to commence providing the Services to Customer to meet all requested service dates, as indicated on the attached Telecommunications Service Description(s); provided, however, Telecom shall not be liable to Customer for any damages resulting from or alleged to have resulted from Telecom's inability to install or have installed the Facilities or to commence to provide

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the Services to Customer on the requested service dates if such inability is caused by circumstances beyond Telecom's control.

- B. The point of demarcation for DS3 service (with M13 multiplexers) from Telecom's Network Control Center (NCC) to Mobilnet's Indianapolis MTSO will be the DSX-1 panel located in Mobilnet's Indianapolis MTSO and provided by Indiana Digital Access (IDA) under subcontract to Telecom. The point of demarcation at Mobilnet's other sites will be provided by the Local Exchange Carrier providing the local loop.
- C. Within five business days following Telecom's installation of the Facilities, Telecom in the presence of an authorized representative of Customer, will conduct a continuity test to demonstrate to Customer that the Facilities are able to provide the Services. If the authorized representative of Customer ("Facility Engineer") is satisfied that the Facilities are able to provide the Services, the Facility Engineer shall so acknowledge in writing and Telecom, upon receipt of such acknowledgement, will commence to provide Services to Customer in accordance with the terms and conditions of this Agreement. The date upon which Services are first provided to Customer shall be the "Service Commencement Date." The Service Termination Hour is defined as twelve PM on the Service Termination Date.

2. Charges For Services and Facilities

- A. Nonrecurring Charge. Customer shall pay Telecom a nonrecurring charge as shown in the pricing section of the Telecommunications Service Description(s) attached hereto and shall be in lieu of any other charges whether or not provided in Telecom's tariff. All nonrecurring charges will be included on Telecom's invoice for the first months service charges.
- B. Service Charges. Commencing in the month following the month in which the Service Commencement Date occurs, Customer shall pay to Telecom a monthly

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service charge as described in the pricing section of the Telecommunications Service Order(s). Local Exchange Carrier (LEC) portions of the end-to-end circuits are tariffed charges and will be billed to Customer on a pass through basis. Any and all increases or decreases in these LEC tariffed circuits will also be passed through to Customer.

For the purpose of invoice generation, each month is considered to have 30 days. For the month in which the service commencement or discontinuance date occurs, the fractional monthly service charge or credit shall be determined by counting the number of days remaining in the billing period (counting only to 30 days for the billing period), starting the day after the service commencement or the day after the service discontinuance. Divide the resulting figure by 30 days. The resultant fraction is then multiplied by the monthly service charge to arrive at the fractional monthly service charge or credit. On the first business day of the month following the month in which the service commencement or discontinuance date occurred customer will be billed for the fractional monthly service charge or credit for the month in which the service commencement date or discontinuance date occurred, plus the monthly service charge for the for the month following the month in which the service commencement date occurred.

Thereafter, Customer will be billed monthly in advance for the monthly service charge. Each bill shall be due thirty (30) days following the date of mailing of the invoice and shall be payable at GTE Telecom, care of Boatmen's National Bank, P.O. Box 18237F, St. Louis, MO 63150-8237 or such other place as may from time to time be specified by Telecom. Except for disputed amounts, any bill which remains unpaid for more than sixty (60) days following the date of mailing of the bill shall be delinquent and subject to an interest charge on the delinquent amount at the rate of one and one-half percent (1 1/2%) per month or the maximum rate allowable under the law, whichever is lower. Within thirty (30) days of the date of mailing of the invoice

Customer shall, in writing, notify Telecom of any portions of the invoice in dispute. Such notice shall contain detailed information on why Customer believes that portion of the invoice to be invalid. The late payment charge shall be in addition to and not in lieu of any other remedy Telecom may have hereunder or under the law as a result of Customer's failure to pay its bill when due. In the event any bill remains unpaid for more than ninety (90) days following the date of mailing thereof, Telecom may discontinue providing Services to Customer under this Agreement and terminate this Agreement in accordance with paragraph 7 of this Agreement.

- C. Maintenance and/or Service Charge. Customer shall be responsible for the costs incurred by Telecom in connection with a maintenance and/or service visit to Customer's premises when the difficulty or trouble results solely from the equipment or facilities provided by Customer. Said cost shall be based upon the current per-man hour labor rate of Telecom in effect at the time of the visit. Any invoice for such a maintenance and/or service visit which remains unpaid for more than sixty (60) days following the receipt of the invoice shall be delinquent and subject to an interest charge on the delinquent amount at the rate of one and one-half percent (1-1/2%) per month or the maximum rate allowable under the law, whichever is lower. In the event any such invoice remains unpaid for more than ninety (90) days following the mailing thereof, Telecom may discontinue providing services to Customer under this Agreement and terminate this Agreement in accordance with paragraph 7 of this Agreement.
- D. Tax. Customer shall pay to Telecom any taxes which Telecom is required by law to collect from Customer in connection with Telecom's provision of services to Customer. The amount of each tax will be shown separately on Telecom's bills or invoices.

If a certificate of exemption or similar document or proceeding is to be made in order to exempt the sale from excise, sales or use tax liability, Customer will

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pursue and obtain, for Telecom, such certificate, document, or proceeding.

Should Customer enter into any tax matter dispute process on its own behalf Customer hereby agrees to indemnify and hold harmless Telecom from any damages and or penalties imposed during the dispute process. Additionally, if Telecom is required to continue to pay any disputed taxes during the dispute process Customer agrees to continue to reimburse Telecom for these amounts and any penalties imposed.

3. Obligations of Customer and Limitations on Liability.

A. Customer shall not use the Services for any purpose or in any manner directly or indirectly in violation of any statute or ordinance or any rule or regulation of any governmental entity or in aid of any unlawful act or undertaking. Customer, upon request and after Telecom has signed an appropriate non-disclosure agreement, shall furnish such information as may be required to permit Telecom to design and maintain the Services and Facilities and to assure that provision of the Services and Facilities are in accordance with the provisions of this Agreement and if applicable Telecom's Tariff on file with and approved by the Commission. Except to the extent inconsistent with the specific terms and conditions of this Agreement, the terms and conditions set forth in the Tariff shall apply and be binding upon Customer as if set forth fully herein.

B. Customer shall be responsible for:

- (1) Ensuring compatibility of equipment and systems provided by Customer, the interface shall be specified on the Telecommunication Service Order(s) and shall conform to North American Telephony Industry Standards.
- (2) Damage to facilities of Telecom caused by the negligence or willful act of Customer except to the extent that such damage was caused by Telecom;

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- (3) Reimbursing Telecom for any loss occasioned by the theft of Telecom's facilities installed on Customer's premises;
- (4) The provision of the electrical power required to operate Telecom's and or Local Exchange Carrier facilities installed on Customer's premises;
- (5) Obtaining permission for Telecom's agents or employees to enter Customer's premises at any reasonable hour for the purpose of installing, inspecting, repairing or, upon termination of the service, removing all of Telecom's facilities and equipment;
- (6) Making Telecom's service components and equipment available periodically for maintenance purposes at a time agreeable to both Telecom and Customer, and providing for reasonable access to those facilities and equipment; and
- (7) All authorized actions or omissions of a person, firm or corporation appointed by Customer as its agent. Any limitations of an Agent's authority shall be provided in writing to Telecom within thirty (30) days of the appointment of such Agent by Customer.
- (8) If Customer is to perform work on Telecom premises Customer shall obtain and maintain in force for the term of any affected Telecommunications Service Description, Commercial General Liability Insurance, including coverage for contractual liability, personal injury or death, or property damage, in an amount not less than \$1,000,000.00 per occurrence, insuring Customer and naming Telecom as an additional insured. Before commencing work on Telecom premises Customer will provide satisfactory evidence of the required insurance and stating that no policy relative to this agreement may be

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cancelled or materially altered without first giving Telecom 30 days written notice.

Before commencing work on Telecom premises, Customer will procure and maintain, during the term of service, Unemployment, Social Security, and Employer's Liability Insurance in accordance with the laws of the state in which the work is being performed.

- C. Telecom shall indemnify Customer and save Customer harmless from and against:

All damages, claims for damages, judgments, costs and expenses, including attorneys' fees, that may occur by reason of Telecom's willful misconduct, negligence or willful breach of this Agreement.

4. Obligations of Telecom and Limitations on Liability.

- A. The undertaking of Telecom to provide the Services and Facilities is limited by the terms and conditions of Telecom's Tariff and this Agreement. Telecom shall maintain and repair any equipment which it furnishes to Customer. Telecom represents that scheduled system maintenance normally will not result in interruptions, and that in the event that system maintenance should require the interruption of Services, to the extent possible it shall be accomplished only after prior written notification to Customer and will be completed within a reasonable time and wherever possible during low traffic periods. Telecom represents that it will take every reasonable precaution to avoid any interruption of Service in the event of any scheduled or unscheduled performance of maintenance. Telecom will provide Customer a minimum of five (5) business days notice of all scheduled maintenance. Customer shall not rearrange, disconnect, remove, or attempt to repair any equipment installed by Telecom without prior written consent of Telecom.

- B. Telecom shall ensure compatibility of equipment and systems provided by Telecom. The interface shall be specified by Customer on the Telecommunication Service Order(s) and shall conform to North American Telephony Industry Standards.
- C. Service Outages will be restored within four (4) hours, except for major outages, after which Telecom will restore Customer affected circuits within the same time as Telecom uses to restore its own traffic bearing circuits.
- D. Telecom shall permit Customer to co-locate Customer's telecommunications equipment in the points-of-presence of Telecom within the State of Indiana. Such permission shall be at the sole discretion of Telecom and will be based on the availability of space and Telecom's business plans. Each such request will be dependent upon the successful execution of a mutually agreed to Site Use Agreement.
- E. If Telecom performs work on Customer's premises, Telecom will, upon request, provide evidence of its Commercial General Liability Insurance, the same as the requirements placed on Customer in paragraph 3 (h) above.
- F. Telecom shall not be responsible for installation, operation or maintenance of any terminal equipment for communications systems provided by Customer. The responsibility of Telecom shall be limited to the provision of the Services and Facilities and to the maintenance and operation thereof.
- G. Telecom shall not be liable for any defacement of or damage to the premises of Customer resulting from the furnishing of Facilities or the attachment of the instruments, apparatus and associated wiring furnished by Telecom on such premises or by the installation or removal thereof, when such defacement or damage is not the result of negligence or willful misconduct of the agents or employees of Telecom.

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- H. **No Consequential Damages:** In no event shall Telecom be liable for any indirect incidental, consequential or special damages or lost revenue or profits, or lost data, whether or not Telecom shall have been notified of the possibility of such damages.
- I. Telecom shall not be liable for damage arising out of mistakes, omissions, interruptions, delays or errors, or defects in transmission occurring in the course of furnishing the Services where the same are caused by the negligence of Customer. Any liability of Telecom arising out of any of the foregoing or for failing to maintain proper standards or maintenance and operation or for failing to exercise reasonable supervision shall in no event exceed the amount provided for in Section 5 hereof.
- J. Customer shall indemnify Telecom and save Telecom harmless from and against:
- (1) All claims for libel, slander, and infringement of copyright arising from material transmitted by Customer over the Facilities;
 - (2) Claims for infringement of patents arising from, combining with, or using in connection with, the Facilities and systems or apparatus of Customer;
 - (3) All other claims arising out of any act or omission of Customer in connection with the use of the Facilities or Services provided by Telecom; and
 - (4) All damages, claims for damages, judgments, costs and expenses, including attorneys' fees, that may occur by reason of Customer's willful misconduct, negligence or willful breach of this Agreement.
 - (5) Force Majeure. Telecom shall not be liable for any Service Interruption or any other failure of performance by reason of an Act of God or due to causes beyond its reasonable control, including,

but not in any way limited to externally caused transmission interference, natural disaster, cable cuts and or actions or decrees of governmental bodies. Each such event shall constitute an event of force majeure. In the event of delay of Telecom's performance obligations resulting from any event of force majeure, such performance obligations shall be extended for a period of time equal to the length of the delay: provided, that if any such delay shall exceed fifteen (15) days, notwithstanding any other provision hereof, then after said 15-day period either party hereto may terminate the Services on the affected circuit(s) on seven (7) days' prior written notice.

5. Credit for Interruption of Service. An "interruption" means any fifteen (15) minute interval with a complete interruption of transmission or a bit error rate worse than 1×10^{-8} for a particular communications path. In the event of an interruption in the Services provided under this Agreement, allowance for the period of interruption, if not due solely to the fault or negligence of the Customer, shall be as follows, in lieu of the provisions for service interruption as provided for in Telecom's tariff:
 - A. No credit shall be allowed for cumulative interruptions of less than one hundred and five (105) minutes per calendar year. Customer shall be credited for any cumulative interruption, in excess of one hundred and five (105) minutes per calendar year, at the rate of 1/43200 of the monthly rate of charge for each minute, or major fraction thereof, of cumulative interruption for the particular month. For the purpose of this paragraph, interruption shall be measured from the time of Customer's notice to Telecom that an interruption has occurred or from the time that Telecom records the interruption of service, whichever event occurs first, to the time of restoration.
 - B. An interruption allowance shall not be applicable for any period during which Customer fails to afford access to any facilities for the purpose of investigating and clearing troubles.

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- C. Notification of service outages shall be directed to Telecom at its National Trouble Reporting Desk located at the 24-hour/day 7 day/week Network Control Center (NCC). Phone Numbers are In-State Indiana 800 982-9226; Out of State 800 336-9616; Indianapolis IN. (317) 633 4834 or to:

GTE Telecom Incorporated
Network Control Center
Attn: Network Manager
175 North College Avenue
Indianapolis, Indiana 46202

Telecom's NCC is staffed by personnel capable of responding to any Customer inquiry regarding use and operation of the service provided by Telecom to Customer and capable of resolving any problems encountered by Customer in using the services under this agreement.

Customer shall receive notification of service outages at:

GTE Mobilnet Service Corporation
433 North Capitol Avenue
Suite 400
Indianapolis, Indiana 46204

Attn: Operations Manager

- D. Telecom shall use its best effort to re-route Customer's services, at no additional cost to Customer, in the event of: 1) any extended interruption of service, or 2) Telecom anticipates any extended interruption of service.
- E. Telecom shall prepare and maintain a Contingency Plan applicable to the Services provided hereunder. The scope of the Contingency Plan is to provide for contingencies in the event of a catastrophic (e.g., cable cut, fire, explosion, etc.) or extended non-catastrophic interruption of Services. As may be reasonably

requested by Customer, Telecom will permit Customer and its customers to inspect said plan.

F. Telecom represents a normal 99.98% Services Availability on its network facilities (excluding any interruptions due to cable cuts, acts of God or other causes beyond the reasonable control of Telecom).

6. Term. This Agreement shall become effective on the date on which this Agreement is executed by Telecom as indicated below and shall end at the time and on the date(s) indicated on the attached Telecommunications Service Description(s).

Within one (1) year from the date of commencement of Services under this Agreement, Customer may extend the term of this Agreement by providing Telecom written notice thereof. Such extension may be for an additional term of up to five (5) additional years and shall become effective fifteen (15) days following Telecom's receipt of Customer's notice. Any extension of the term of the Service which provides for the continuous operation of the service to a term qualifying for a rate discount from Telecom shall be granted as shown on the attached Telecommunication Service Description(s) from the effective date of such term extension.

At the expiration of the then-applicable term of this Agreement, this Agreement shall continue in effect with respect to the Facilities and Services covered thereby on a month-to-month basis upon the same terms and conditions unless terminated by either party upon sixty (60) days' prior written notice.

7. Termination

- A. In lieu of the provisions cited in Telecom's tariff, in the event any undisputed bill or invoice submitted to Customer for the Services or Facilities provided hereunder by Telecom or for the cost incurred by Telecom in connection with a maintenance and/or service visit to Customer's premises remains unpaid for more than ninety (90) days after the mailing thereof or in the event Customer has materially breached any of

its duties or obligations hereunder and has failed to take corrective action to remedy such breach within thirty (30) days following notification by Telecom that Customer has materially breached one of its obligations or duties under this Agreement, or to make payment within fifteen (15) days of notification that Customer is more than ninety (90) days overdue Telecom may terminate this Agreement and discontinue providing Services to Customer.

- B. Customer may cancel this Agreement without being subject to any cancellation charge or other payment, by written notice of such cancellation given to Telecom not less than fifteen (15) days prior to the date of such cancellation, if 1) the transmission capacity does not become first available on or before the ninetieth (90th) day following the date of this Agreement, or 2) Telecom's material breach of this Agreement (including, but not limited to, the 99.98% service availability), or 3) if the Service is the subject of interruptions accumulating 120 hours or more over any period of 180 consecutive days.
- C. If Customer purports to cancel any Telecommunications Service Description(s) prior to the expiration of any term except as permitted by paragraph 7B, 7D, 7E and 7F or if Telecom terminates the Services pursuant to the first paragraph of this Section, then in either of such events the Customer shall immediately pay to Telecom all charges then due plus a cancellation charge. If such cancellation occurs in the first year of the Term, then the cancellation charge shall be the full amount of the remaining monthly charges for Facilities and Services contracted for and defined on the attached Telecommunications Services Description(s).
- D. Either party shall have the right to cancel this Agreement without liability if either party is prohibited from furnishing the Facilities or Services or if any material rate or term contained herein is substantially changed by order of the highest court of competent jurisdiction to which the matter is appealed,

the Federal Communications Commission or any other federal, state or local government authority.

- E. Customer may cancel this Agreement or the affected Telecommunication Service Description(s) without penalty if Telecom is unable to provide the requested service by the requested service date or if the transmission service levels fall below the transmission standards set forth in the appropriate Bellcore publication for the affected service. In this event Telecom agrees to reimburse Customer for all reasonable and verifiable charges associated with moving Customers circuits to another carrier. Telecom's total liability for such charges shall not exceed Ten Thousand Dollars per occurrence.
- F. Either party may terminate this Agreement by written notice to the other if the other party becomes insolvent, liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of creditors, invokes any provision of law for the relief of debts or initiates any proceeding seeking protection from its creditors. Said notice shall specify the date on which this Agreement is to terminate. Said termination shall not relieve either party of its obligations and duties herein related to the performance of the Agreement prior to its termination.
8. Assignment. Neither party shall assign this Agreement, or any interest therein, except to an affiliate, without the prior written consent of the other party which consent shall not be unreasonably withheld. Subject to the foregoing restriction, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties and their assigns.
9. Confidentiality. Neither party shall disclose to any other person the terms and conditions of this Agreement, or any information concerning the negotiations relating thereto, except as may be required or allowed by law or in connection with the resale of Services to customers of Customer.

10. Telecom agrees to adhere to the appropriate Bellcore transmission standards in effect at the time of service commencement for each specific type of service set forth in the attached Telecommunications Services Description(s).
11. Notwithstanding anything else in the Agreement, but subject to the provisions of Sections 4 and 5 of the Agreement, Telecom agrees to provide Services in accordance with the appropriate Bellcore transmission standards in effect at the time of service commencement for each type of service set forth in the attached Telecommunications Services Description(s).
12. Notices. Any notices or communications required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, at the following addresses or such other addresses as a party may designate in writing to the other party.

If to Telecom:

GTE Telecom Incorporated
1755 Telstar Drive Suite 400
Colorado Springs, CO 80920-1020
ATTN: Contract Administration

With a copy to:

GTE Telecom Incorporated
175 North College Avenue
Indianapolis, IN 46202
ATTN: Network Manager

If to Customer:

GTE Mobilnet Service Corporation
616 FM 1980 West
Suite 400
Houston, Texas 77090

ATTN: General Counsel

With a copy to:

GTE Mobilnet Service Corporation
Meridian Mark I, Suite 320
11611 North Meridian Street
Carmel, Indiana 46032

ATTN: Area Manager

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13. Waiver. Each and every right, power and remedy, whether specifically stated in this Agreement or otherwise existing, may be exercised from time to time and so often and in such order as may be deemed expedient by the party, and the exercise, or beginning of the exercise of any such right, power or remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, any other right, power or remedy. No delay or omission of a party in the exercise of any right, power or remedy shall impair any such right, power or remedy or operate as a waiver thereof or of any other right, power or remedy then or thereafter existing.
14. Entire Agreement. This Agreement, together with the included Attachments comprises the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all prior and contemporaneous agreements, understandings, arrangements or representations heretofore made between the parties hereto and relating to this subject matter. It does not, however, revoke or rescind any prior agreements for these or other services which have been executed by the parties. In case of conflict between this Agreement and the included Attachments, or among the included Attachments themselves, the Agreement shall take precedence over the included Attachments, and the included Attachments shall take precedence in the order listed on the face page thereof. This Agreement may be modified, changed or amended only by an express written agreement signed by duly authorized representatives of both parties hereto stating that it is an amendment.
15. Severability. In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid or unenforceable provision shall be replaced by a provision which, being valid and enforceable, comes closest to the intention of the parties underlying the invalid or unenforceable provisions.
16. Captions. All captions, subject headings, paragraph titles and similar items are provided for the purpose of reference

and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of this Agreement.

17. Relationship of Parties. This Agreement is not intended by the parties to constitute or create a joint venture, pooling arrangement, partnership, agency or formal business organization of any kind. Telecom and Customer shall be independent contractors with each other for all purposes at all times and neither party shall act as or hold itself out as agent for the other or create or attempt to create liabilities for the other party.
18. Governing Law. This Agreement and any questions concerning its validity, construction or performance shall be governed by the laws of the State of Indiana.
19. Definitions.

Agreement. This Service Agreement, after it has been executed by both Telecom and Customer with all included Attachments hereto referenced or identified on the face hereto.

Circuit. A path for the transmission of telecommunications signals between two points.

Included Attachments. Those Appendices and other documents attached to this Agreement which are identified on its face page and referenced thereon by date and title.

Service Performance Standards. Telecom agrees to adhere to the appropriate Bellcore transmission standards in effect at the time of service commencement for each specific service type set for in the attached Telecommunications Services Description(s).

Operations Procedures. The binding operating procedures and technical standards applicable to services provided hereunder in connection with Telecom-provided equipment subject to Customer's control. The Operations Procedures as adopted and revised by Telecom from time to time shall be provided to Customer.

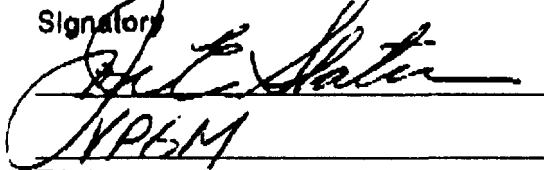
Telecommunications Services. Services requested by the Customer and provided by Telecom, including, as set forth in the attached Telecommunication Service Description(s), which may include, fiber optic voice transmission, digital data and video transmission, connection to computers and terminals, switch services and network control.

Term. The minimum period of time for which the Customer is obligated to take service under this Agreement.

IN WITNESS WHEREOF, Telecom and Customer have caused this Agreement to be executed on behalf of each through their respective authorized personnel on the date indicated.

GTE TELECOM INCORPORATED

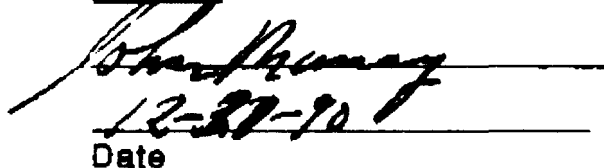
Signatory



Title

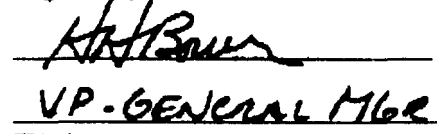
12/13/90
Date

ATTEST


12-27-90
Date

CUSTOMER

Signatory


VP-GENERAL MGR

Title

11/19/90
Date

ATTEST

Date

**GTE TELECOM INCORPORATED
CARRIER CAPACITY AGREEMENT**

This CARRIER CAPACITY AGREEMENT (hereinafter referred to as the "Agreement" or "CCA") is made and entered into as of December 3, 1996 between GTE Telecom Incorporated (hereinafter referred to as "TELECOM"), a Delaware corporation with principal offices at 201 N. Franklin Street, Suite 700, Tampa, Florida 33601; and GTE Hawaiian Telephone Company Incorporated, hereinafter referred to as "CUSTOMER"), with offices at 1177 Bishop Street, Honolulu, HI 96813, for the provision of Telecommunications Services (hereinafter referred to as "Services") as described herein and accepted by Customer under this Agreement, subject to the terms and conditions contained herein.

1. **CARRIER CAPACITY DESCRIPTIONS:** Requests for Services to be provided hereunder shall be issued by CUSTOMER from time to time on TELECOM Carrier Capacity Description Form(s) (hereinafter referred to as a "CCD", a copy of which is attached hereto and made a part hereof as Exhibit 1) or on Customer's Forms accepted in writing by an authorized representative of TELECOM. Each CCD shall reference this Carrier Capacity Agreement by CCA Number. Such CCDs or Customer Forms, as applicable, shall be effective when accepted in writing by TELECOM and shall become part of this Agreement only to the extent that they specify the type of Service to be provided, quantity of circuits, originating and terminating cities, requested service date, length of service term, recurring and non-recurring charges for provision of Service, and other information necessary for TELECOM to provide Service to the CUSTOMER. Applicable cancellation charges shall apply as stated in Section 10. below. Any other terms and conditions that are typed, printed or otherwise included in any CCD shall be deemed to be solely for the convenience of the parties. No action by TELECOM (including, without limitation, provision of Service to CUSTOMER pursuant to such CCD) shall be construed as binding or estopping TELECOM with respect to such term or condition, unless the CCD containing said specific term or condition has been duly executed.

2. **EFFECTIVE DATE AND APPLICATION OF THIS AGREEMENT:** This Agreement shall be effective between the parties as of the date first written above. This Agreement shall apply exclusively to the Service provided to CUSTOMER pursuant to the CCD(s) identified with this Agreement and accepted by TELECOM, for the Service Term stated therein and any automatic extensions thereof. TELECOM reserves the right not to accept a CCD under this Agreement at any time.

3. **CAPACITY COMMITMENT PERIOD AND AUTOMATIC EXTENSION:** The Service Term for Services subject to recurring charges and described in a CCD shall commence on the Confirmed Service Order Date or the date upon which the Service first becomes available, in conformity with technical standards, whichever is later. TELECOM will make reasonable efforts to meet the CUSTOMER requested in service date. If TELECOM cannot meet the Confirmed Service Order Date within thirty (30) calendar days, except for any reasonable outside construction delays or delays caused by those events described in Section 11 below.

CUSTOMER has the right to terminate the CCD without penalty. Upon expiration of the Service Term, Service will automatically be extended for continuing thirty (30) day periods and may be canceled by either party upon thirty (30) calendar days written notice. The charges for Service during any such extension shall be the same as that during the Service Term.

4. **DESCRIPTION OF SERVICES:** As specified in the CCD accepted by TELECOM hereunder, TELECOM will provide to CUSTOMER the following Services:

(a) **Capacity** Service through the installation and operation of either owned or leased telecommunications facilities between TELECOM designated termination points (hereinafter "Capacity"), and

(b) **Ancillary Services** Other Services, available on an optional basis, as may be requested by the CUSTOMER (hereinafter referred to "Ancillary Service").

5. **LOCAL ACCESS/ANCILLARY SERVICES AND CHARGES:** (a) Upon CUSTOMER's request, TELECOM may, at its sole option and when reasonable under the circumstances, act as agent for the CUSTOMER with responsibility for provisioning and the initial testing of an interconnection between selected Interexchange Service and a CUSTOMER designated termination point and/or service. Charges to CUSTOMER for Local Access Service administered on behalf of CUSTOMER by TELECOM shall be as stated in the accepted CCD.

(b) TELECOM may also provide Other or Ancillary Services to CUSTOMER, including but not limited to any one or more of the following:

- (1) Multiplexing/demultiplexing service ("Muxing");
- (2) Digital cross-connect service;
- (3) Extraordinary service under the following circumstances including but not limited to:
 - (i) CUSTOMER's request to expedite Service availability to a date earlier than a previously accepted start date or Confirmed Service Order Date;
 - (ii) Service redesign or other activity occasioned by receipt of inaccurate information from CUSTOMER;
 - (iii) Reinstallation services for any suspension of Service for cause by TELECOM;
 - (iv) CUSTOMER's request for use of routes or facilities other than those selected by TELECOM for provision of the Service;

- (v) CUSTOMER'S request for use of rack space and power in TELECOM facilities;
- (vi) Other circumstances in which extraordinary costs and expenses are generated by CUSTOMER and reasonably incurred by TELECOM.

(c) Recurring and non-recurring charges to CUSTOMER for Local Access (including TELECOM's Coordination Fee) and Ancillary Services shall be established as of TELECOM's acceptance of the CCD relevant thereto.

6. CUSTOMER RESPONSIBILITIES: CUSTOMER has sole responsibility for installation, testing, and operation of facilities, services, and equipment other than those specifically provided by TELECOM under a duly accepted CCD. In no event will the untimely installation or non-operation of CUSTOMER's facilities, services, and equipment (including local exchange access and customer premise equipment) relieve CUSTOMER of its obligation to pay charges for Capacity or Ancillary Service as of the In Service Date. Notwithstanding the immediately preceding sentence, in the event CUSTOMER notifies TELECOM of any untimely installation or non-operation of CUSTOMER facilities, equipment, or services at least thirty (30) days prior to the Confirmed Service Order Date, CUSTOMER shall have an option of extending the In Service Date for not more than thirty (30) days. TELECOM's liability for delays in installation, testing, and operation of Interexchange Service and Ancillary Service is limited in Section 12 below.

7. PAYMENT OF CHARGES: Subject to Section 8 below, all charges for Services provided by TELECOM pursuant to this Agreement shall be specified in the CCD referred to in this Agreement. Payment for all pro-rated monthly recurring charges (i.e., charges for monthly Capacity provided for less than a calendar month), installation, and other non-recurring charges shall be due on the last day of the month in which the Service was provided. Payment of all monthly recurring charges for entire months during which Capacity or Ancillary Service is to be provided shall be due on the last day of the month in which the Service was provided (hereafter referred to as the "Due Date"). CUSTOMER agrees to timely remit payment to TELECOM at the remittance address indicated on the TELECOM invoice to CUSTOMER. In the event CUSTOMER fails to pay TELECOM's invoice in full or remit payment at the proper address on the Due Date, CUSTOMER shall pay a late fee in an amount equal to one and one-half percent (1 1/2 %) of the unpaid balance per month. The late fee will be applied for the number of days from the payment Due Date up to and including the date payment is received by TELECOM. Notwithstanding the foregoing, late fees shall apply to, but shall not be due and payable for, amounts reasonably disputed by CUSTOMER provided: (i) CUSTOMER notifies TELECOM of the basis of such dispute in writing within thirty (30) days after the Due Date and (ii) negotiates in good faith with Telecom for the purpose of resolving such dispute. In the event such dispute is resolved in favor of TELECOM, CUSTOMER will pay to TELECOM the once disputed amount together with the applicable late fees. In the event the dispute is resolved in favor of the CUSTOMER, CUSTOMER will receive a credit for the amounts determined not to be owed together with a credit for the applicable late fees.

(c) Notwithstanding the foregoing, and upon thirty (30) days prior written notice, either party shall have the right, without cancellation charge or liability, to cancel (i) an affected portion of the Service, if TELECOM is prohibited by governmental authority from furnishing said portion, or (ii) an affected portion of the Service if any material rate or term contained herein is substantially changed by final order of a court of competent jurisdiction, the Federal Communication Commission, or other local, state or federal government authority.

11. FORCE MAJEURE: If TELECOM's performance of this Agreement or any other obligation hereunder is prevented, restricted or interfered with by causes beyond their reasonable control including but not limited to acts of God, fire, explosion, vandalism, cable cut, storm, or other similar occurrence, any law, order, regulation, direction, action or request of the United States government or state or local government, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more said governments, or civil or military authority, or by national emergencies, insurrections, riots, wars, strikes, lockouts or work stoppages or other labor difficulties, suppliers' failures, shortages, breaches, or delays, then TELECOM shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference. TELECOM shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or cease.

12. SERVICE WARRANTY: TELECOM warrants that it will provide the Service to CUSTOMER in accordance with prevailing telecommunication industry standards (hereinafter "Technical Standards"). TELECOM will use reasonable efforts under the circumstances to remedy any delays, interruptions, omissions, mistakes, accidents or errors in any Service and restore the Service in accordance with Technical Standards. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN THE EVENT OF ANY OUTAGE IN THE SERVICE WHATSOEVER, NEITHER TELECOM NOR ANY THIRD PARTY PROVIDER OR OPERATOR OF FACILITIES EMPLOYED IN THE PROVISION OF THE SERVICE SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, PUNITIVE, OR ANY OTHER DAMAGES, OR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER.

13. INDEMNIFICATION: In the event parties other than CUSTOMER shall have use or benefit of or shall be otherwise affected by the Service provided through CUSTOMER, then CUSTOMER agrees to forever indemnify and hold TELECOM and any third party provider or operator of the facilities employed in the provision of the Service harmless from and against any and all claims, demands, suits, actions, losses, damages, assessments or payments which may be asserted by said parties, arising out of or related to any outage in Service.

8. **ADDITIONAL CHARGES:** CUSTOMER acknowledges and understands that all charges stated in the CCD are computed by TELECOM exclusive of any applicable federal, state, or local use, excise, gross receipts, sales, and privilege taxes, duties, fees or similar liabilities (other than general income or property taxes), whether charges to or against TELECOM or CUSTOMER because of the Service furnished by TELECOM ("Additional Charges"), and that such Additional Charges shall be paid by CUSTOMER in addition to all other charges provided for herein.

9. **SUSPENSION OF SERVICE:** (a) In the event payment in full is not received from CUSTOMER on or before thirty (30) days following the Due Date with respect to any undisputed amounts or on or before ninety (90) days following the Due Date with respect any reasonably disputed amounts, TELECOM shall have the right, after giving CUSTOMER fifteen (15) days written notice via express courier service or registered mail, to suspend (i) all or any portion of Service, or (ii) upon subsequent notice, all or any additional Service to CUSTOMER; and, in either event, until such time as CUSTOMER has paid in full all charges then due, including any late fees as specified herein.

(b) Following such payment, TELECOM shall be required to reinstate Service to CUSTOMER only upon CUSTOMER's provision to TELECOM of satisfactory assurance (such as a deposit) of CUSTOMER's ability to pay for Service and CUSTOMER's advance payment of the cost of reinstating Service. If CUSTOMER fails to make such payment by a date determined by and acceptable to TELECOM, CUSTOMER will be deemed to have canceled the suspended Service effective the date of the suspension. Upon such termination, all balances become due and payable.

10. **CANCELLATION:** (a) After a CCD is accepted by TELECOM, CUSTOMER may cancel all or a portion of the Service described therein upon thirty (30) days advance written notice of cancellation to TELECOM, under the following conditions:

- (1) If notice of cancellation is received by TELECOM more than thirty (30) days prior to the Confirmed Service Order Date, cancellation charges comprised of administrative expenses, any capital expended, and any other out-of-pocket expenses will be due TELECOM.
- (2) If notice of cancellation is received by TELECOM less than thirty (30) days prior to the Confirmed Service Order Date, cancellation charges comprised of administrative expenses, any capital expended, any other out-of-pocket expenses, and three (3) months of monthly recurring charges will be due and payable to TELECOM.

(b) It is agreed that TELECOM's damages in the event of a cancellation can be difficult or impossible to ascertain. The provision for cancellation charges in this subsection is intended, therefore, to establish liquidated damages in the event of any cancellation and are not intended as a penalty. In the event CUSTOMER cancels existing service prior to the end of the Service Term described in the CCD, CUSTOMER shall pay TELECOM an amount equal to the balance of the monthly Service charges that otherwise would have become due for the unexpired portion of the Service Term.

14. **NOTICES:** Notices under this Agreement shall be in writing and delivered to the person whose name and business address appears below:

TO GTE TELECOM:

GTE Telecom Incorporated
201 N. Franklin Street
Suite 700
Tampa, Florida 33602
Attention: Manager - Contracts and Tariffs

TO CUSTOMER:

GTE Hawaiian Telephone Company Incorporated
1177 Bishop Street
Honolulu, HI 96813
Attention: George Schneider

The effective date for any notice under this Agreement shall be the date of delivery of such notice, not the date of mailing.

15. **USE OF SERVICE:** Upon TELECOM's acceptance of a CCD hereunder, TELECOM will provide the Service specified therein to CUSTOMER upon the condition that the Service shall not be used for any unlawful purpose.

16. **PROPRIETARY INFORMATION:** CUSTOMER understands and agrees that the terms and conditions of this Agreement and all documents referenced herein (including without limitation, invoices to CUSTOMER for Service provided hereunder) are confidential as between CUSTOMER and TELECOM and shall not be disclosed by CUSTOMER to any party other than the directors, officers, and employees of CUSTOMER or agents of CUSTOMER who have specifically agreed to nondisclosure of the terms and conditions hereof. Violation by CUSTOMER or its agents of the foregoing provision shall entitle TELECOM, at its option, to cause discontinuation of the Service to CUSTOMER without further obligation or liability of TELECOM to CUSTOMER.

17. **GENERAL PROVISIONS:** (a) Other Documents CUSTOMER will execute such other documents, provide such information, and affirmatively cooperate with TELECOM, all as may be reasonably required by TELECOM and relevant to providing the Service. In particular, CUSTOMER accepts the responsibility for providing TELECOM with special access surcharge exemption forms as may be required by the local exchange carrier.

(b) Non-Waiver The failure of either party to give notice of default or to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or condition of this Agreement or the granting of an extension of time for the performance shall not constitute the permanent waiver of any term or condition of this Agreement and this

Agreement and each of its provisions shall remain at all times in full force and effect until modified by the parties in writing.

(c) Relationship of the Parties The provision of Service will not create a partnership or joint venture between the parties or result in a joint communications service offering to third parties.

(d) Enforcement In the event suit is brought or an attorney is retained by TELECOM to enforce terms of this Agreement or to collect any monies due hereunder or to collect money damages for breach hereof, it shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation, and other related expenses incurred in connection therewith.

(e) Modification No subsequent agreement shall change, modify or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by authorized representatives of both parties.

(f) Assignment This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors or assigns, provided, however, that CUSTOMER shall not assign or transfer its rights or obligations under this Agreement without the prior written consent of TELECOM, which consent shall not be unreasonably withheld, and further provided that any assignment or transfer without such consent shall be deemed void and shall entitle TELECOM to terminate the Service provided hereunder, at its option, upon ten (10) days prior written notice.

(g) Governing Law This Agreement shall be a contract between TELECOM and CUSTOMER and the terms hereof shall be construed under the laws of the State of Florida without regard to choice of law principles.

(h) Severability If any part or any provision of this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement, and the CUSTOMER and TELECOM hereby agree to negotiate with respect to any such invalid or unenforceable part to the extent necessary to render such part valid and enforceable.

(i) Survival The terms and provisions contained in this Agreement that by their sense and content are intended to survive the performance thereof by the parties hereto shall survive the completion of performance and termination of this Agreement, including, without limitation, provisions for indemnification and the making of any and all payments due hereunder

(j) Headings The section headings are for convenience only and shall not be considered in its interpretation.

(k) Interpretation Words having well-known technical or trade meanings shall be so construed, and all listing of items shall be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably applies in the interpretation of this Agreement.

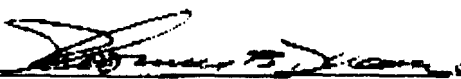
(I) **Entire Agreement** This Agreement consists of all the terms and conditions contained herein, in Carrier Capacity Descriptions, if applicable, that conform hereto, and documents incorporated herein specifically by reference; this Agreement constitutes the complete and exclusive statement of agreements and understandings between the parties, and supersedes all proposals and prior agreements (oral and written) between the parties relating to Service provided hereunder. No representations or warranties, express or implied, have been made or relied upon in the making of this Agreement, other than those specifically contained in this Agreement.

Attachments: Exhibit 1 - Carrier Capacity Description

IN WITNESS WHEREOF, the parties have executed this Carrier Capacity Agreement by their duly authorized representatives.

GTE TELECOM INCORPORATED

**GTE HAWAIIAN TELEPHONE COMPANY
INCORPORATED**

By: 

By: 

Name: Thomas B. Duane

Name: George Schmelzer

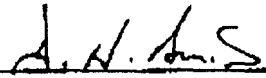
Title: Vice President/General Manager

Title: Mgr - Intl Svcs Network Planning

Date: 12/3/96

Date: 11/26/96

and

By: 

Name: David H. Amis

Title: Controller

Date: 12/8/96